[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 96-2253

ADRIAN BONILLA-MONTALVO,

Appellant,

v.

BANCO BILBAO VIZCAYA-PUERTO RICO
(former Banco Comercial Mayaguez), ET AL

Appellees

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF PUERTO RICO

[Hon. Salvador E. Casellas, U.S. District Judge]

Before

Torruella, Chief Judge,
Campbell, Senior Circuit Judge,
and Boudin, Circuit Judge.

Adrian Bonilla Montalvo on brief pro se.

Wanda Luna Martinez and Montanez & Alicea, Law Office on brief for appellees.

March 26, 1997

Per Curiam. Upon careful review of the brief and record, we conclude that appellant's fraud claim against the bank was properly dismissed on res judicata grounds. We reach this conclusion essentially for the reasons stated by the bankruptcy court in its decision and order dated December 1, 1994, and by the district court in its opinion and order dated August 20, 1996. Thus, the Puerto Rico courts ruled on the merits of appellant's fraud claim in a prior equitable proceeding between appellant and the bank, and that ruling bars relitigation of the same fraud claim in the present adversary bankruptcy proceeding as between the same parties. See Heiser v. Woodruff, 327 U.S. 726, 736 (1946).

Appellant points out that the other defendants named in the adversary proceeding were not parties to the prior foreclosure and equitable proceedings. That fact is irrelevant to the res judicata effect of those prior proceedings as to the bank. Further, the adversary complaint against the other defendants was dismissed for

failure to state a claim upon which relief could be granted, and appellant has not developed any argument that such dismissal was erroneous. Therefore, the issue is waived.

The bank's request for sanctions is denied, without prejudice to the filing of a separate motion. See Fed. R. App. P. 38; 1st Cir. Loc. R. 39.2.

Affirmed. See 1st Cir. Loc. R. 27.1.

UNITED STATES COURT OF APPEALS
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No. 96-2253

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Appellant

v.

BANCO BILBAO VIZCAYA-PUERTO RICO
(former Banco Comercial Mayaguez), ET AL

Appellees

JUDGMENT

Entered: March 26, 1997

This cause came on to be submitted on the briefs and the original record on appeal from the United States District Court for the District of Puerto Rico.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

/s/ WILLIAM H. NG
Clerk

cc: Adrian Bonilla Montalvo
Wanda Luna Martinez, Esq.

[NOT PUBLISHED]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ADRIAN BONILLA MONTALVO	*	
	*	
Plaintiff-Appellant	*	**Civil No.**
	*	**95-1029**
v.	*	**(SEC)**
	*	**Bankruptcy**
	*	**Appeal**
BANCO BILBAO VIZCAYA, et al.	*	
	*	
	*	
Defendants-Appellees	*	

****

OPINION AND ORDER

This is an appeal from an opinion and order entered on December 2, 1994 by the Bankruptcy Court of the United States for the District Court of Puerto Rico, case no. 87-00304 (GAC), Adversary no. 89-0029 **(Docket #2)**.

The issue on appeal before this Court is whether the Bankruptcy Court erred in dismissing appellant's adversary proceeding in Bankruptcy case no. 89-0029, pursuant to the doctrine of res judicata. Upon careful scrutiny of the parties' arguments, the record before us and the applicable law, we hereby **affirm** the Bankruptcy Court's

decision to dismiss the adversary proceedings case no. 89-0029. Accordingly, plaintiff-appellant's appeal is hereby **DISMISSED.**

Procedural Background

On February 19, 1987, plaintiff-appellant Adrián Bonilla Montalvo ("appellant" or "Bonilla") filed a bankruptcy petition under Chapter 11 of the Bankruptcy Code, case no. 87-00304 (SEK) (Docket #4, Appellant's Brief, p. 2). In said case codefendant Banco Comercial de Mayaguez, now named Banco Bilbao Vizcaya (hereinafter "the Bank"), filed a proof of claim for the amount of $24,996.00, which established that its credit arose from the judgment entered by the Superior Court of Puerto Rico, Mayaguez Part, in case no. CS 81-1138 (Appellant's Brief, Exhibit VI).

Appellant objected to the Bank's proof of claim and filed a tort action requesting jury trial against the bank and other codefendants, case no. 87-00304(SEK), adversary no. 89-0029. On June 26, 1991, a hearing was held

to determine if the Court had jurisdiction to entertain the issue between the parties. That same day the Bank offered and the Court admitted a certified copy of the judgment entered in the state court, case number CS 81-1138.

Plaintiff-appellant objected to the evidence offered, on the grounds that the Bank committed fraud before the state court to obtain judgment in its behalf. The Court granted plaintiff-appellant time to submit the proof of fraud to the Court, when the Bank obtained the first judgment in its favor in case no. CS 81-1138. On April 22, 1992 the Bankruptcy Court entered a judgment in case no. Adv. 89-0029, granting full faith and credit, based on the doctrine of res judicata, to the judgment obtained by the Bank in the state court, case no. CS 81-1138, and dismissed case no. Adv. 89-0029. (Appellant's Brief, p. 3)

Appellant appealed the judgment, and in case no. 92-2333 (JAF) the Honorable Judge Jose A. Fusté remanded

the adversary proceeding back to the Bankruptcy Court on July 8, 1993. He instructed the parties to request the parties to furnish the local decisions allegedly documenting plaintiff-appellant's previous litigation of fraud in case no. CS 84-552 of the local court. In the Matter of Adrian Bonilla Montalvo, 157 B.R. 510, 514 (D. Puerto Rico 1993).

Upon remand, on December 2, 1994, the Honorable Judge Gerardo A. Carlo entered a decision and order dismissing Adv. no. 89-0029 with prejudice, pursuant to the doctrine of res judicata. (Appellee's Brief, Exhibit F). Plaintiff-appellant now appeals Judge Carlo's decision.

Applicable Law/ Analysis

The Bankruptcy Court's findings of fact shall be upheld unless they are clearly erroneous, and the Bankruptcy Court's conclusions of law shall be reviewed de novo. T.I. Fed. Credit Union v. Delbonis, 72 F.3d 921, 928 (1st Cir. 1995).

Appellant claims that the issue

of whether the Bank committed fraud in the proceedings in CS 81-1138 was not litigated in CS 84-552. (Appellant's brief, p. 4) In his complaint in the Bankruptcy adversary proceeding Bonilla alleges that the Bank committed fraud on the Court by misrepresenting to the Superior Court the law which applied to determine the allowable interest rate. Bonilla alleges that the Bank's mispresentations allowed it to collect interest in excess of the rate allowed by law.

> The Bankruptcy Court rejected appellant's arguments, as if noted:
>
> Based on Bonilla's arguments and the documents submitted by the Bank and Bonilla, it becomes clear that the fraud in the proceedings that Bonilla is now alleging is the same fraud that was alleged in case CS 84-552, which was an action brought by Bonilla to obtain relief from the judgment obtained in CS 81-1138. Bonilla's allegations all relate to what he alleges to be a fraud that condemned him to pay interest at the rate of 17% in violation of the usury law. (Opinion and Order of Hon. Judge Carlo, Dec. 2, 1994, p. 4-5)

As noted above, the Bankruptcy

Court held that the fraud issue had been fairly litigated in the Superior Court in CS 84-552, and that the Superior Court of Mayaguez had dismissed Bonilla's complaint on March 11, 1986. (Appellee's Brief, Exhibit A) On April 3, 1986, the Superior Court denied Bonilla's motion for reconsideration, since it concluded that Bonilla had failed to show fraud in the complaint, and that the statements about the applicable interest rates were frivolous. Id. (Exhibits B,C). On May 8, 1996, the Supreme Court of Puerto Rico issued a resolution declining to hear the case. (Exhibit D) Pursuant to the above analysis, the Bankruptcy Court dismissed appellant's claim.

Under the rule of res judicata --sometimes called "claim preclusion"-- a valid and final personal judgment is conclusive of a claim. If the judgment is for the plaintiff, the claim is extinguished and merged in the judgment; if the judgment is for the defendant, plaintiff is barred from reasserting the claim. Restatement of Judgments 2d § 17. Claim preclusion

applies "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." Cromwell v County of Sac, 94 U.S. 351, 352 (1877); see also Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313, 329 (1971); Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979).

Notwithstanding the federal court's interpretation of the res judicata doctrine, the Surpeme Court has emphasized that federal courts cannot employ their own rules of res judicata in determining the effect of state judgments. Rather, federal courts must accept the rules chosen by the state from which the judgment is taken. Kremer v. Cheimcal Construction Corp., 456 U.S. 461, 481-482 (1982).

With this in mind, we must examine the rules of res judicata as interpreted by the Supreme Court of the Commonwealth of Puerto Rico. The doctrine of res judicata is codified in 31 L.P.R.A.

§3343. This sections reads, in pertinent part:

> In order that the presumption of the res judicata may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes and persons of the litigants, and their capacity as such.

The Supreme Court of Puerto Rico has frequently reiterated these requirements in their application of the res judicata doctrine. A & P General Contractors, Inc. v. Asociación Caná, Inc., 110 D.P.R. 753, 763 (1981); Negrón v. C.I.T. Financial Services Corp., 111 D.P.R. 657, 661 (1981)

Upon review of this doctrine, this Court finds that the doctrine of claim preclusion applies to the present case. Judge Fustè cogently noted in a previous proceeding on this case that:

> the fundamental doctrine of res judicata rests at the core of our judicial system. The doctrine prohibits a claim from being litigated repetitiously outside of the normal appeals process,

> and the goals of finality and certainty are furthered by the application of the doctrine. And standing alongside the fundamental doctrine of res judicata is the constitutional mandate that all courts in the United States must give full faith and credit to the decisions of other courts, be they territorial, state, federal, or special tribunal. U.S. Const. Art. IV, §1.[1]
>
> In the Matter of Adrian Bonilla Montalvo, 157 B.R.510, 512-513 (D. Puerto Rico 1993)

As an exception to the res judicata doctrine, a judgment obtained with the

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[1] The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

aid of fraud does not deserve the deference usually given a case by other courts. Id. at 513. A party may collaterally attack a previous judgment by proving that the previous decision arose from fraud. In re Bloomer, 32 B.R. 25, 26 (Bankr. W.D. Mich. 1983). However, federal courts have held that the existence of previous state proceedings in which fraud was pled precludes a subsequent, collateral attack of the original decision that was allegedly based on fraud. Heiser v. Woodruff, 327 U.S. 726, 736 (1946); United States v. Boch Oldsmobile, Inc., 909 F.2d 657, 660 (1st Cir. 1990).

The First Circuit has dealt with similar legal and factual issues on prior occasions. The Court of Appeals held in In re Giorgio, 862 F.2d 933, 936 (1st Cir. 1988), that a state court judgment cannot be set aside by a federal bankruptcy court if under state legislative or case law, the state judgment is valid. The Court noted: "[I]n respect to a state court judgment, [it] is itself a matter of state law, 28 U.S.C. §1738...[T]here can be no

life to a state law claim, when a state court in a related prior proceedings authoritatively says that none exists." Id. at 936 (quoted in In re Bonilla Montalvo, 157 B.R. at 513.

In view of this holding, we find that appellant's fraud claim must fail, since it has already been fairly and conclusively litigated in Puerto Rico's Commonwealth Courts. The doctrine of res judicata and claim preclusion precludes us from espousing a different outcome. Pursuant to our above discussion, plaintiff-appellant's appeal is hereby **DISMISSED**. Judgment shall follow accordingly.

SO ORDERED.

In San Juan, Puerto Rico, this 20th day of August, 1996.

/s/ SALVADOR E. CASELLAS
United States District
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ADRIAN BONILLA MONTALVO	*	
	*	
Plaintiff	*	**Civil No.**
	*	**95-1029(SEC)**
v.	*	**Bankruptcy**
	*	**Appeal**
BANCO BILBAO VIZCAYA, et al.	*	
	*	
Defendants	*	

****

JUDGMENT

Pursuant to our opinion and order of even date, plaintiff-appellant's appeal is hereby **DISMISSED.** Judgment is hereby entered accordingly.

SO ORDERED.

In San Juan, Puerto Rico, this 20th day of August, 1996.

/s/ SALVADOR E. CASELLAS
United States District
Judge

[NOT PUBLISHED]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:	
ADRIAN BONILLA MONTALVO:	
Debtor	Case No. 87-00304 (GAC)
	Chapter 11
ADRIAN BONILLA MONTALVO:	
Plaintiff	Adv. No. 89-0029
v.	
BANCO COMERCIAL DE MAYAGUEZ, NEFTALI ROSA, EUGENIO RIVERA, DAGOBERTO MONTALVO IGNACIO, NECA MORTGAGE, EDDIE ACARON AND FRANK RAMIREZ RAMIREZ	
Defendants	DECISION AND ORDER

BACKGROUND

On August 2, 1982, the Superior Court of Puerto Rico, Mayaguez Part entered a judgment in case CS 81-1138 against Adrian Bonilla Montalvo ("Bonilla") for $35,776 plus interest after November 4, 1981 at the rate of 17%. The plaintiff was Banco Comercial de Mayaguez, now named Banco Bilbao Vizcaya Puerto Rico (hereinafter "Bank").

The judgment arose from Bonilla's default on a loan provided by the Bank to Bonilla. The decision granting the Bank judgment against Bonilla in the amount of $35,776 plus interest at the rate of 17% was affirmed by the Supreme Court of Puerto Rico on January 20, 1983.

On February 19, 1987, Bonilla filed a bankruptcy petition under Chapter 11. On April 2, 1987, the Bank filed a claim in the amount of $24,996 as the amount owing on the judgment obtained in CS 81-1138. Bonilla filed this adversary proceeding on February 17, 1989, alleging that the state court proceedings in CS 81-1138 were tainted by fraud. Bonilla requests that this court set aside the judgment in favor of the Bank in CS 81-1138.

The Bank contends that prior to filing bankruptcy, Bonilla brought an action in state court, CS 84-552, alleging that the judgment in CS 81-1138 was obtained through fraud. The Bank indicates that CS 84-552 was dismissed by the Superior Court, Mayaguez Part and the Supreme Court of Puerto Rico

affirmed the dismissal.

On April 22, 1992, the Honorable Sara de Jesús dismissed this adversary complaint with prejudice finding that Bonilla had not submitted evidence of fraud and that because the state court judgment was entitled to full faith and credit, the issue of fraud was res judicata. As to the other defendants, Judge de Jesús found that Bonilla failed to state a claim upon which relief could be granted. Bonilla appealed the decision to the U.S. District Court for the District of Puerto Rico.

The Honorable Judge Jose A. Fusté remanded the adversary proceeding back to the bankruptcy court on July 8, 1993, "with instruction to request the parties to furnish the local decisions allegedly documenting debtor's previous litigation of fraud as it pertains to this case." In the Matter of Montalvo, 157 B.R. 510, 512 (D. Puerto Rico 1993). Judge Fusté's decision further states that "[i]f fraud has been previously argued, a dismissal with prejudice would be in order on res judicata grounds. If

fraud has not been previously litigated, the bankruptcy court must schedule a hearing on the fraud issue and proceed to decide the case according to relevant law." Id.

Pursuant to the instructions of the District Court, Judge de Jesús held a status conference on October 19, 1993, to address the remand order. The parties were ordered to file the appropriate documentation pertaining to whether the state courts had considered the issue of fraud.

On December 22, 1993, the Bank filed a motion submitting the state court documents in support of its position that the issue of fraud was previously litigated. Bonilla filed a motion in opposition on January 7, 1994.

On April 27, 1994, Bonilla moved for the issuance of a writ of mandamus in the District Court against Judge de Jesús directing her to render a decision on the fraud issue. On September 6, 1994, Judge de Jesús entered

an order disqualifying herself from this adversary proceeding because Bonilla had filed suit seeking the writ of mandamus ordering her to resolve the remanded issues. The case was then transferred to this court's docket.

DISCUSSION

In his opinion remanding this case back to the bankruptcy court, Judge Fusté summarized the doctrine of res judicata as it relates to a collateral attack on a state court judgment in a federal bankruptcy court. Judge Fusté held that while res judicata prohibits a claim from being litigated outside of the normal appeals process, there is an exception to the application of the principle where it is alleged that there was fraud underlying the original judgment. In the Matter of Montalvo, 157 B.R. at 512-13. But even in this situation, "if the fraud at issue was the subject of litigation in a previous suit, such a suit itself has a preclusive or res judicata effect." Id. at 513.

On December 22, 1993, the Bank submitted by motion the state court

documents in support of its contention that fraud was previously litigated in this case. The Bank contends that the documents submitted show that Bonilla brought an action in state court, case CS 84-552, seeking relief from the judgment obtained by the Bank in CS 81-1138. In CS 84-552, the Bank contends that the state court was presented with and decided the issue of whether the Bank had obtained the judgment in CS 81-1138 by fraud.

In his response of January 7, 1994, Bonilla contends that the issue of whether the Bank committed fraud in the proceedings in CS 81-1138, was not litigated in CS 84-552. Bonilla argues that "the fraud in the proceedings was committed for the creditor defendant to obtain judgment in their behalf in the collection of usurious interest." In his complaint in this adversary proceeding, Bonilla alleges that the Bank committed fraud on the court by misrepresenting to the Superior Court the law which applied to determine the allowable interest rate. Bonilla alleges that the Bank's misrepresentations

allowed it to collect interest in excess of the rate allowed by law.

Based on Bonilla's arguments and the documents submitted by the Bank and Bonilla, it becomes clear that the fraud in the proceedings that Bonilla is now alleging is the same fraud that was alleged in case CS 84-552, which was an action brought by Bonilla to obtain relief from the judgment entered in CS 81-1138. Bonilla's allegations all relate to what he alleges to be a fraud that condemned him to pay interest at the rate of 17% in violation of the usury law.

When Bonilla defended in CS 81-1138, the original lawsuit in which the Bank obtained judgment against him Bonilla responded to the Bank's motion for summary judgment indicating as defenses to the Bank's action that he had been involved in an accident and that a fire had occurred destroying his home. Bonilla did not deny that he owed the money but rather contended that he was unable to pay at the time. The Superior Court rejected Bonilla's defenses and

entered judgment in favor of the Bank.

Based on the loan documents, the Superior Court determined that the applicable interest rate was 14% or the maximum allowed by law. The Court determined that the loan was evidenced by a demand note and determined as a matter of law that the maximum interest rate allowed for demand notes was 17%. Accordingly, the Superior Court allowed interest at the rate of 17%. The Supreme Court of Puerto Rico subsequently affirmed the Superior Court's determination of the allowable interest rate.

Bonilla filed CS 84-552 seeking relief from the judgment obtained by the Bank in CS 81-1138. With respect to fraud on the court, in paragraph four of the second cause of action in Bonilla's amended complaint in CS 84-552, Bonilla alleged that the fraud on the court consisted of the Bank indicating in its motion for summary judgment that the demand note in CS 81-1138, provided for recovery of interest upon the loan at a rate of 14% or the maximum interest

allowed by law. Bonilla alleged that in representing to the court that on the expiration of the loan term, the loan converted to a demand note and that it was regulated under a particular regulation that permitted interest at 17%, the Bank committed fraud.

In a decision on summary judgment in CS 84-552 issued on March 11, 1986, the Superior Court discussed both the issue of fraud on Bonilla and fraud on the court. On the first cause of action, the Court stated that "[Bonilla] imputes fraud to the [Bank]. When it deals with fraud between the parties, the motion for relief must be presented within the term of 6 months, which was not done. Municipio de Coamo v. Tribunal Superior, 99 D.P.R. 932 (1971)." (translation ours).

On the second cause of action the court stated that:

> Fraud to the Court is alleged. The statement is frivolous not only because it is not true that the promissory note calls for the collection of 14% annual interest, (it also states "or at the maximum interest rate that the Board of Regulation

> of Interest Rates and Financing Charges of Puerto Rico permits to be charged to the subscribing party while the present obligation is not paid. . .)" but because likewise this Court as well as the Honorable Supreme Court of Puerto Rico considered the matter, expressing the Honorable Supreme Court that interest at 17% was the "rate permitted at that time."
> Judgment of January 20, 1983, number 0-82-547.

(translation ours.) Accordingly, the Superior Court dismissed Bonilla's complaint.

On April 3, 1986, the Superior Court denied Bonilla's motion for reconsideration. The Court indicated that Bonilla failed to show fraud in the complaint and that the amended complaint was not accepted. The court also found that the statements about the applicable interest rates were frivolous. On may 8, 1986, the Supreme Court of Puerto Rico issued a resolution declining to hear the case.

A party may not request the bankruptcy court to reexamine issues determined by a previous judgment.

Heiser v. Woodruff, 66 S. CT. 853, 858 (1946). "Nor can an attack be sustained on a judgment allegedly procured by fraudulent representations of the plaintiff, when the charge of fraud has been rejected in previous litigations by the parties to the suit in which the judgment was rendered or their representatives." Id. (citations omitted). If the issue of fraud was raised and decided against the party, the principles of res judicata preclude the revival of the litigation in bankruptcy. Id. at 857.

Bonilla alleged in state court that the bank had defrauded him and that the Bank had defrauded the court to obtain usurious interest. Both the Superior Court and the Supreme Court of Puerto Rico rejected these arguments The Superior Court and the Supreme Court of Puerto Rico determined that interest at the rate of 17% was the rate permitted by law. Accordingly, this issue is res judicata and may not be relitigated.

The issue of fraud on the court is res judicata notwithstanding that

Bonilla's amended complaint in CS 84-552 was not accepted by the Superior Court. The Superior Court's refusal to accept the amended complaint and the Court's decision dismissing the complaint was affirmed by the Supreme Court of Puerto Rico. Under the Laws of Puerto Rico, the doctrine of res judicata precludes a party from "relitigating the questions they raised or could have raised in the petition for relief from judgment." Figueroa v. Banco de San Juan, 108 Official Translations of the Supreme Court of Puerto Rico 723, 729, 108 D.P.R. 680 (1979) (citations omitted). See also Arecibo Radio Corp. v. Com. of Puerto Rico, 825 F.2d 589, 592 (1st Cir. 1987); Rocca v. Royal Bank of Canada, P.R. Inc., 726 F. Supp. 15, 17 (D. Puerto Rico 1989). Accordingly, Bonilla is precluded from relitigating issues that were raised in his amended complaint in CS 84-552, even though the complaint was not accepted by the state courts.

Bonilla's allegations of fraud also suggest that the state courts erred in determining the applicable interest

rate. A party can not, however, "resort to the mechanism of an independent action. . . [for] the purpose of substituting the proceeding for review or of providing an additional relief against an erroneous judgment." Figueroa v. Banco de San Juan, 108 Official Translations of the Supreme Court of Puerto Rico at 729 (citations omitted). Judicial error is excluded as a ground for relief from judgment. Id. at 730 (citations omitted). Thus, Bonilla's claim that in determining the interest rate, the state courts adopted and applied a law that had been repealed is not a basis for relitigating in this court the state courts' determination of the allowable interest rate. Whether or not the state courts erred in determining the allowable interest rate, the determination by the state courts of the appropriate rate is not a basis for an argument that the judgment was obtained by fraud.

This court concludes that Bonilla's claim that the Bank committed fraud in the proceedings to obtain interest in excess of that allowed by the usury

law is res judicata.

ORDER

Bonilla's adversary complaint shall be, and it hereby is, dismissed with prejudice.

Judge de Jesús disqualified herself from this adversary proceeding, but not from the underlying bankruptcy case. Accordingly, the clerk will refer the bankruptcy case back to Judge de Jesús for any further action that may be required.

IT IS SO ORDERED.

Dated at San Juan, Puerto Rico this 1st day of December, 1994.

By the Court:

/s/ Gerardo A. Carlo
U.S. Bankruptcy Judge

cc. Adrian Bonilla
L.R. Santos
M. Bigas Mendez
Eddie Acaron
UST
M. Figueroa
D. Mayo
Opening for
change in dkt
of judges name
Lillian Morales
Lizette

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO

In re	:	
	:	
ADRIAN BONILLA MONTALVO	:	CASE NO.
	:	87-00304(GAC)
Debtor-Plaintiff	:	CHAPTER 11
	:	
v.	:	AP NO: 89-0029
	:	
BANCO COMERCIAL DE MAYAGUEZ, NEFTALI ROSA, EUGENIO RIVERA DAGOBERTO MONTALVO IGNACIO, NECA MORTGAGE, EDDIE ACARON AND FRANK RAMIREZ RAMIREZ	:	
	:	
Defendants	:	
	:	

J U D G M E N T

In accordance with Fed. R. Bankr. P. 9021, and for the reasons set forth in the Decision and Order entered by the Honorable Gerardo A. Carlo on December 2, 1194, it is now

ADJUDGED and **DECREED** that Judgment be and it hereby is entered dismissing the instant adversary proceeding with prejudice, and it is further

ADJUDGED and **DECREED** that the legal case number 87-00304 be referred to

the Honorable Sara de Jesus for any further action that may be required.

San Juan, Puerto Rico, this 8th day of December, 1994.

CELESTINO MATTA-MENDEZ
CLERK OF COURT

/s/ Litza M. Cardona, Chief
Deputy Clerk

cc. Adrian Bonilla
L.R. Santos
M. Bigas Mèndez
Eddie Acaron
UST
M. Figueroa
G. Mayo

PUERTO RICO STATUTES

Banking Law of the Commonwealth of Puerto Rico, 7 L.P.R.A. § 151(a)

§ 151. Declaration of policy and powers of Secretary of the Treasury of Puerto Rico

(a) It is hereby declared that it is the policy of the Commonwealth of Puerto Rico that the businesses of all the banking institutions organized under the laws of Puerto Rico and of the foreign banks operating in this Island, shall be inspected and regulated by the Secretary so as to insure the sound and safe conduct of said businesses in order to prevent unsound practices and thus maintain the public trust in said businesses and protect the public interest and the interest of the depositors, creditors and stockholders.

Civil Code of Puerto Rico, Usury Act 31 L.P.R.A. sec. 4594

§ 4594. Receipt of money or goods at excessive rate of interest; enforcement of contracts

No person, except as authorized by section 4593 of this title, shall

demand or receive, directly or indirectly, any money or goods, at any greater rate of interest for the loan or extension of time of said loan, that the rate provided for in sections 4591 -4599 of this title. Nothing in these sections shall be taken to prohibit the sale of goods for cash at a less price than for credit.

No contract wherein or whereby there is reserved, accepted or secured, or agreed to be reserved, accepted or secured, any greater rate of interest than is allowed by sections 45914599 of this title may be made effective in any court in Puerto Rico, except for the amount of the principal due; and the court must provide, furthermore, in the judgment directing the debtor to pay the principal, that the creditor shall recover only seventy-five (75) percent of said principal and that the remaining twenty-five (25) percent shall be awarded to and recovered by the Commonwealth of Puerto Rico, who may obtain a writ of execution, in the same manner as the plaintiff, but without precedence over the amount awarded to

the latter, to make effective the twenty-five (25) percent in that manner awarded.

The rights herein defined shall not be waived. -Civil Code, 1930, § 1652; Const., art. IX, § 4; July 24, 1952, No. 11, p. 30, eff. July 25, 1952.

Code of Commerce of Puerto Rico, 10 L.P.R.A. § 998(h)

§ 998h. Effective regulations

The provisions of the regulations approved under section 998a of this title shall not be applicable either to contracts entered into or to obligations prior to the effective date of the regulations. Every contract shall be governed by the provisions of the regulation in effect on the date the contract is completed, even if said regulation is subsequently amended or repealed. -Oct. 15, 1973, No. 1, p. 849, § 9, eff. Oct. 15, 1973.

Civil Code of Puerto Rico,
31 L.P.R.A. § 3343

§ 3343. Destruction of presumptions; res judicata

Presumptions established by law may be destroyed by proof to the contrary, except in the cases in which it is expressly prohibited.

Only a judgment obtained in a suit for revision shall be effective against the presumption of the truth of the res judicata.

In order that the presumption of the res adjudicata may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants, and their capacity as such.

In questions relating to the civil status of persons, and in those regarding the validity or nullity of testamentary provisions, the presumption of the res adjudicata shall be valid against third persons, even if they should not have

litigated.

It is understood that there is identity of persons whenever the litigants of the second suit are legal representatives of those who litigated in the preceding suit, or when they are jointly bound with them or by the relations established by the indivisibility of prestations among those having a right to demand them, or the obligation to satisfy the same. -Civil Code, 1930, § 1204.

FEDERAL STATUTES

Public Law 96-221 of March 31, 1980 codified 12 U.S.C. § 1735 f-7

§ 1735f-7. Exemption from State usury laws; applicability

(a) The provisions of the constitution of any State expressly limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved by lenders and the provisions of any State law expressly limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, or advance which in insured under subchapter I or II of this chapter.

(b) The provisions of subsection (a) of this section shall apply to loans, mortgages, or advances made or executed in any State until the effective date (after December 21, 1979) of a provision of law of that State limiting the rate or amount of interest, discount points, or other charges on any such loan, mortgage, or advance.

(June 27, 1934, c. 847, Title V, § 529, as added Dec. 21, 1979, Pub. L. 96-153, Title III, § 308, 93 Stat. 1113.)

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12 U.S.C. § 86

§ 86. Usurious interest; penalty for taking; limitations

The taking, receiving, reserving, or charging a rate of interest greater than is allowed by section 85 of this title, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same: Provided, That such action is commenced within two years from the time the usurious transaction occurred. (R.S. § 5198.)

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18 U.S.C. § 1961(6)(B)

§ 1961. Definitions

As used in this chapter--

(6) "unlawful debt" . . .(B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;